IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

CRP.No. 609 of 2007()

AGAINST THE ORDER DATED 16/06/2007 IN EP 223 2005 IN OS.599/1995 of PRL.S.C.,THALASSERY

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REVN. PETITIONER: RESPONDENT/DEFENDANT NO.3:

BALU BALAN, S/O. CHINNAN,
SHIVAJI BHAVAN, THIRUVANGAD AMSOM, DESOM,
THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

RESPONDENTS: PETITIONER/PLAINTIFF:

MOORKOTH PREMARAJAN, S/. KUNHIKANNAN,
PAMBUMMEKKAT HOUSE, KADIRUR AMSOM, DESOM,
THALASSERY TALUK, REP. BY POWER OF ATTORNEY HOLDER
P.K.PRADEEP KUMAR, S/O. ACHUTHAN,MADHAVI SADANAM,
KADIRUR AMSOM DESOM, THALASSERY TALUK,KANNUR DIST.

BY ADV. SRI.R.SURENDRAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 1615/07 IN C.R.P. NO: 609/07

DISMISSED:

16/8/07 SD/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No. 609 OF 2007 G

Dated this the 16th August, 2007.

O R D E R

This civil revision petition is preferred against the order of the Subordinate Judge, Thalassery in E.P.223/05 in O.S.599/95. The suit was one for realisation of the amount due from the defendants and the plaintiff has obtained a decree and now the plaintiff wants to execute the decree by realising the said amount from the civil revision petitioner by way of arrest and detention in the civil prison. The decree holder contended for the position that the petitioner is having means to pay. He is having lands and realizable assets, runs a business and that he has got a bank account and is only evading the payment and therefore he has to be arrested. On the contra the revision petitioner would contend that out of the 17 3/8 cents of property owned by him he has sold 7 3/8 cents and the balance extent available is 10 cents and there is already a mortgage with respect to that property and it is with the co-operative bank. He would also contend that regarding the residential house again there is a liability from the bank and that has to be repaid. So far as the business is concerned he denies the same. According to the respondent i.e the revision petitioner he opened an account

for purpose of net work business. So far as the realizable amount in the hands of the revision petitioner is concerned no positive evidence is available but as reported in the decision reported in **Kuppuswamy v. P.G.Menon {1992(2) KLT 203}** "where it is proved or admitted or otherwise evident that the judgment debtor owns or possess a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sale or mortgage or creating other encumbrance of the house. In such circumstances it is open to the judgment debtor to rebut the presumption and prove either that he does not own or possess a house or that no alienation or encumbrance is possible from that property." Along with the revision petition the revision petitioner has produced two documents issued by the bank ie. Tellicherry Co-operative Urban Bank, Annexure I document relates to the liability of Rs.1,15,779/- and it is also stated therein that 10 cents of property comprised in survey No:18 and resurvey No: 21/4 is mortgaged with the bank. Annexure II document relates to the two cents of property comprised in resurvey No: 215 and outstanding balance of Rs.1,34,791/- is due from the revision petitioner. So, at this stage the revision petitioner has produced some documents to prove about the liability on the land and of the mortgage which may stand in the way of

disposal of the property by the judgment debtor so as to make it a realizable asset. But the decree holder has not been given an opportunity to adduce evidence against these documents for the reason that these documents were not produced before the executing court. Since I am giving an opportunity for the revision petitioner to prove these documents in accordance with law in support of his contentions it is only just and proper that decree holder is also permitted to produce documents and I leave open all the contentions to be raised by both sides to be decided by the court below by permitting them to adduce both oral and documentary evidence in support of their respective contentions. Therefore, the order under challenge is set aside and the matter is remitted back for consideration as mentioned above. Parties are directed to appear before the court below on 17.9.2007. The court below shall try to dispose of the matter within a time frame of three months from the date of first appearance of the parties. C.R.P is disposed of accordingly.

M.N.KRISHNAN
Judge

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